

Message Text

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SUBJ: CCD - FIRST DRAFT OF NWFZ STUDY, CHAPTER VI

FOLLOWING IS TEXT OF FIRST DRAFT OF CHAPTER VI (NUCLEAR-WEAPON-FREE ZONES AND INTERNATIONAL LAW) DISTRIBUTED TO EXPERTS JULY 14;
BEGIN TEXT.

VI. NUCLEAR-WEAPON-FREE ZONES AND INTERNATIONAL LAW RELATIONSHIP WITH INTERNATIONAL LAW

1. ARRANGEMENTS FOR THE EXCLUSION OF NUCLEAR WEAPONS FROM AREAS OF THE GLOBE FULLY CONFORM WITH THE PROVISIONS OF THE UNITED NATIONS CHARTER, AND PARTICULARLY WITH ITS ARTICLE 1 UNDER WHICH STATES UNDERTAKE "TO TAKE EFFECTIVE COLLECTIVE MEASURES FOR THE PREVENTION AND REMOVAL OF THREATS TO THE PEACE ..., TO DEVELOP FRIENDLY RELATIONS AMONG NATIONS ... AND TO TAKE OTHER APPROPRIATE MEASURES TO STRENGTHEN UNIVERSAL PEACE".

2. THE CREATION OF NUCLEAR-WEAPON-FREE ZONES CONFORMS ALSO WITH
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THE PROVISIONS OF ARTICLE 52 OF THE CHARTER, WHICH ENVISAGES THE

EXISTENCE OF REGIONAL ARRANGEMENTS OR AGENCIES FOR DEALING WITH SUCH MATTERS RELATING TO THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY AS ARE APPROPRIATE FOR REGIONAL ACTION, PROVIDED THAT SUCH ARRANGEMENTS OR AGENCIES AND THEIR ACTIVITIES ARE CONSISTENT WITH THE PURPOSES AND THE PRINCIPLES OF THE CHARTER.

3. THE ESTABLISHMENT OF SUCH ZONES IS FURTHERMORE IN CONFORMITY WITH THE CUSTOMARY LAW RELATING TO DEMILITARIZED ZONES.

4. THE FORMATION OF A VALID NUCLEAR-WEAPON-FREE ZONE MUST BE EFFECTED IN ACCORDANCE WITH THE PURPOSES AND THE PRINCIPLES OF THE UNITED NATIONS CHARTER AND THE FUNDAMENTAL PRINCIPLES GUIDING THE MUTUAL RELATIONS OF STATES. OF THESE THE FOLLOWING ARE ESPECIALLY PERTINENT TO THE CONTEXT OF MILITARY DENUCLEARIZED ZONES: SOVEREIGN EQUALITY AND RESPECT FOR THE RIGHTS INHERENT IN SOVEREIGNTY; REFRAINING FROM THE THREAT OR USE OF FORCE; THE INVIOABILITY OF FRONTIERS; THE TERRITORIAL INTEGRITY OF STATES; PEACEFUL SETTLEMENT OF DISPUTES; NON-INTERVENTION IN INTERNAL AFFAIRS; EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES; CO-OPERATION AMONG STATES; AND FULFILMENT IN GOOD FAITH OF OBLIGATIONS UNDER INTERNATIONAL LAW.

5. IN FULL COMPLIANCE WITH THESE PRINCIPLES, IT IS UNANIMOUSLY RECOGNIZED THAT THE CREATION OF A NUCLEAR-WEAPON-FREE ZONE SHOULD BE PART OF A SYSTEM OF MEASURES AIMED AT NUCLEAR AND FINALLY GENERAL AND COMPLETE DISARMAMENT. THE VIEW WAS ALSO STRONGLY EXPRESSED THAT THE TREATIES ESTABLISHING SUCH ZONES SHOULD BE CAPABLE OF EXTENDING NOT ONLY THE GEOGRAPHICAL AREA OF THE ZONE BUT OF ITS DISARMAMENT AND OTHER PEACEFUL OBJECTIVES. THE ESTABLISHMENT OF A NUCLEAR-FREE-ZONE, IT WAS STATED, WAS NOT TO BE REGARDED AS AN END IN ITSELF, BUT AS A MEANS TOWARDS THE WIDER OBJECTIVES OF INTERNATIONAL PEACE AND SECURITY. IT WAS STRESSED THAT THIS EVENTUAL EXTENSION TO OTHER AREAS OF DISARMAMENT WAS PARTICULARLY NECESSARY IN VIEW OF THE RENUNCIATION OF NUCLEAR WEAPONS BY THE ZONAL STATES.

6. MANY EXPERTS, PARTICULARLY THOSE FROM NON-NUCLEAR-WEAPON STATES, EMPHASIZED THAT STATES FORMING A NUCLEAR-WEAPON-FREE ZONE ARE ENTITLED TO NEGATIVE AND POSITIVE SECURITY ASSURANCES FROM THE NUCLEAR-WEAPON STATES, AND THEY MAINTAINED THAT THIS RIGHT DE-

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RIVES BOTH FROM THE GENERAL PRINCIPLES OF INTERNATIONAL LAW WHICH REQUIRE STATES TO REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THREAT OR USE OF FORCE, AND THE NATURE OF OBLIGATIONS THEY UNDERTOOK IN CREATING THE NUCLEAR-WEAPON-FREE ZONE.

7. IT WAS EMPHASIZED THAT PARTICULAR ATTENTION SHOULD BE PAID TO SECURITY COUNCIL RESOLUTION 255 OF 19 JUNE 1968 WHICH CHARGED THE SECURITY COUNCIL, AND PARTICULARLY THE NUCLEAR-WEAPON MEMBERS,

TO ACT IMMEDIATELY TO PROVIDE ASSISTANCE TO ANY NON-NUCLEAR STATE ATTACKED OR THREATENED BY ATTACK, BY NUCLEAR WEAPONS. REFERENCE HAS ALSO BEEN MADE TO GENERAL ASSEMBLY RESOLUTION 2936 (XXVII) BY WHICH IT DECLARED, ON BEHALF OF THE STATES MEMBERS OF THE ORGANIZATION, THEIR RENUNCIATION OF THE USE OR THREAT OF FORCE IN ALL ITS FORMS AND MANIFESTATIONS IN INTERNATIONAL RELATIONS, IN ACCORDANCE WITH THE PROVISIONS OF THE CHARTER OF THE UNITED NATIONS, AND THE PERMANENT PROHIBITION OF THE USE OF NUCLEAR WEAPONS. IT IS TO BE NOTED HOWEVER THAT THE SECURITY COUNCIL DID NOT ACT UPON THE RECOMMENDATION OF THE GENERAL ASSEMBLY WHICH ASKED IT TO TAKE APPROPRIATE MEASURES FOR THE FULL IMPLEMENTATION OF THE DECLARATION. REFERENCE COULD ALSO BE MADE TO THE DECLARATION ON THE PROHIBITION OF THE USE OF NUCLEAR AND THERMONUCLEAR WEAPONS, CONTAINED IN GENERAL ASSEMBLY RESOLUTION 1653 (XVI).

8. THE NATURE OF THE ARRANGEMENTS FOR THE CREATION OF A NUCLEAR-WEAPON-FREE ZONE REQUIRES THAT THESE BE FORMAL, LEGALLY BINDING INSTRUMENTS, AND THAT THE TREATY-MAKING PROCESS SHOULD BE COVERED BY THE INTERNATIONAL LAW OF TREATIES. WHILE THE DETAILS OF THIS PROCESS ARE NOT APPROPRIATE TO THIS STUDY, IT IS NECESSARY TO EMPHASIZE THE IMPORTANCE FOR THIS PARTICULAR TYPE OF ARRANGEMENT OF THE OBLIGATION OF STATES TO REFRAIN FROM ACTS WHICH WOULD DEFEAT THE OBJECT AND PURPOSE OF THE TREATY WHEN: (A) IT HAS SIGNED THE TREATY OR HAS EXCHANGED INSTRUMENTS CONSTITUTING THE TREATY SUBJECT TO RATIFICATION, ACCEPTANCE OR APPROVAL, UNTIL IT SHALL HAVE MADE ITS INTENTION CLEAR NOT TO BECOME A PARTY TO THE TREATY; OR (B) IT HAS EXPRESSED ITS CONSENT TO BE BOUND BY THE TREATY, PENDING THE ENTRY INTO FORCE OF THE TREATY AND PROVIDED THAT SUCH ENTRY INTO FORCE IS NOT UNDULY DELAYED.

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9. IT IS ALSO INHERENT IN THE NATURE OF THE TREATY THAT IT SHOULD NOT BE ENTERED INTO FORCE WITH RESERVATIONS AS TO ITS PROVISIONS RELATING TO THE COMPLETE ABSENCE OF NUCLEAR WEAPONS FROM THE TERRITORY OF THE ZONE AND IT IS MOST DESIRABLE THAT SUCH A TREATY SHOULD BE CONCLUDED FOR AN UNLIMITED PERIOD OF VALIDITY.

10. DISPUTES ARISING IN RELATION TO THE FUNCTIONING AND INTERPRETATION OF A NUCLEAR-WEAPON-FREE ZONE TREATY MUST BE SETTLED BY PEACEFUL MEANS AND THE TREATY SHOULD CONTAIN ADEQUATE PROVISIONS IN THIS RESPECT. THE SETTLEMENT OF DISPUTES AS WELL AS THE AVOIDANCE OF THEIR APPEARANCE WOULD BE GREATLY FACILITATED BY THE EXISTENCE IN THE TREATY OF PROVISIONS FOR STRONG SAFEGUARDS AND CONTROL.

11. THE DECLARATION OF A NUCLEAR-WEAPON-FREE ZONE BY STATES IN THE AREA WOULD BE OF SMALL SIGNIFICANCE IN THE DENUCLEARIZATION PROCESS UNLESS THE ZONE WORKS DE FACTO. THUS, EXAMINING THE LEGAL QUESTIONS POSED BY THE CREATION OF A NUCLEAR-WEAPON-FREE ZONE, IT HAS BEEN MAINTAINED THAT THE QUESTION OF OBLIGATIONS OF THIRD STATES ARE OF PARTICULAR RELEVANCE, AND THAT ALTHOUGH FROM A UNCLASSIFIED

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PURELY LEGAL STANDPOINT THE EXISTENCE OF THE ZONE DOES NOT DEPEND ON RECOGNITION OR GUARANTEES BY THIRD STATES, ITS EFFECTIVENESS DOES. VIEWED IN THIS LIGHT, THE NEED FOR THE APPROPRIATE RECOGNITION AND GUARANTEES ASSUMES CONSIDERABLE IMPORTANCE.

12. IT WAS ALSO SUGGESTED THAT CONSIDERATION SHOULD BE GIVEN TO LEGAL QUESTIONS RAISED BY INCLUDING INTO THE DENUCLEARIZED ZONE AREAS OUTSIDE THE SOVEREIGNTY OF STATES, OR OF CREATING WHAT HAVE BEEN PREVIOUSLY DESCRIBED AS SAFETY AREAS. SOME EXPERTS MAINTAINED THAT IT WAS ESSENTIAL THAT SAFETY AREAS BE ESTABLISHED ADJACENT TO NATIONAL TERRITORIES IN ORDER TO MAKE A ZONE MORE EFFECTIVE. THEY ARGUED THAT THE ESTABLISHMENT OF SUCH SAFETY AREAS DID NOT REPERSENT A UNILATERAL IMPOSITION BY ZONAL STATES OF THE STATUS OF MILITARY DENUCLEARIZATION TO SUCH AREAS IN VIOLATION OF GENERAL RECOGNIZED NORMS OF INTERNATIONAL LAW, SINCE THE UNDERTAKING OF NUCLEAR WEAPON STATES TO CONSIDER AND RESPECT SUCH AREAS AS MILITARY DENUCLEARIZED ZONES WOULD BE NECESSARY. OTHER EXPERTS, HOWEVER, CONSIDERED THAT THE PROPOSAL RAISED LEGAL ISSUES WHICH WENT BEYOND THE SCOPE OF THIS STUDY, AND WHICH WERE NOT

STRICTLY RELEVANT TO THE ISSUES INVOLVED IN CREATING NUCLEAR-WEAPON-FREE STATES.

13. IN ADDITION, MANY EXPERTS EMPHASIZED THAT IN DEFINING THE TERRITORIES OF A NUCLEAR-WEAPON-FREE ZONE DUE ACCOUNT SHOULD BE GIVEN TO THE PRINCIPLE OF FREEDOM OF NAVIGATION ON THE HIGH SEAS AND THE STRAITS USED FOR INTERNATIONAL SHIPPING. RELEVANT TO THIS PROBLEM IS THE QUESTION OF TRANSIT THROUGH THE ZONE DEALT WITH IN CHAPTER IV. THE VIEW WAS ALSO EXPRESSED THAT MARITIME NUCLEAR-WEAPON-FREE ZONES WERE NOT FEASIBLE.

RELATIONSHIP WITH EXISTING TREATIES

14. IT IS UNDERSTOOD THAT TREATIES ESTABLISHING NUCLEAR-WEAPON-FREE ZONES SHOULD BE CONSISTENT WITH OTHER TREATY OBLIGATIONS OF THE ZONAL STATES. IF SUCH CONSISTENCY IS TO BE ACHIEVED, TWO TYPES OF INSTRUMENTS WILL HAVE TO BE TAKEN INTO ACCOUNT: (A) THOSE OF GENERAL APPLICATION OR INTEREST, AND (B) THOSE OF PARTICULAR APPLICATION OR INTEREST. IN THE FIRST CATEGORY, APART FROM THE CHARTER OF THE UNITED NATIONS, CLOSE ATTENTION WILL HAVE TO BE PAID TO THE TREATY BANNING NUCLEAR WEAPON TESTS IN THE ATMOSPHERE, IN OUTER SPACE AND UNDER WATER, THE TREATY ON THE PROHIBITION OF EMPLACEMENT OF NUCLEAR WEAPONS AND OTHER WEAPONS OF MASS DESTRUCTION ON THE SEA-BED AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF, THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS AND, FROM ANOTHER POINT OF VIEW, THE STATUTE OF IAEA. IN THE SECOND CATEGORY IT IS DESIRABLE THAT CONSISTENCY SHALL BE ACHIEVED WITH THE INSTRUMENTS APPLICABLE IN OTHER REGIONS, SUCH AS THE ANTARCTIC TREATY AND THE TREATY OF TLAHELCO; BUT IT WILL OF COURSE BE NECESSARY TO KEEP CLOSELY IN MIND THE COMMITMENTS WHICH THE STATES INVOLVED IN A PARTICULAR ZONE HAVE MADE UNDER ANY DEFENSIVE ALLIANCE - MULTILATERAL OR BILATERAL - AND UNDER SUCH CONVENTIONS OR AGREEMENTS AS THEY MAY HAVE CONCLUDED AMONG THEMSELVES OR WITH THIRD STATES ON SUCH MATTERS AS NUCLEAR CO-OPERATION.

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15. THE VIEW WAS EXPRESSED BY MANY EXPERTS THAT NO PROPOSALS FOR NUCLEAR-WEAPON-FREE ZONES SHOULD PRESCRIBE STANDARDS OF COMPLIANCE LESS STRINGENT THAN IN THE NPT, AND THAT THE LEGAL OBLIGATIONS FOR STATES MEMBERS OF SUCH ZONES SHOULD BE FULLY COMPATIBLE WITH THOSE UNDER THE NPT.

16. IT WAS ALSO EMPHASIZED THAT PARTICIPATION IN A REGIONAL ARRANGEMENT DOES NOT MAKE PARTICIPATION IN UNIVERSAL TREATIES POINTLESS OR UNNECESSARY BECAUSE SUCH AN ACT WOULD UNDERLINE THE ADHERENCE TO MORE GENERAL NON-PROLIFERATION STANDARDS. SIMILARLY, REGIONAL ARRANGEMENTS - WHILE TAKING INTO ACCOUNT THE PARTICULAR CIRCUMSTANCES OF THE REGIONS - SHOULD BE MEANT TO GO BEYOND THE GENERAL STANDARDS AT LEAST ON TWO POINTS - THAT OF PROHIBITING THE

PRESENCE OF NUCLEAR WEAPONS ON THE TERRITORY OF ZONAL STATES, AND ENSURING ADEQUATE MEANS FOR SAFEGUARDS AND VERIFICATION. THERE IS NOT ANY CONTRADICTION BETWEEN A UNIVERSALLY RESTRICTIVE NORM AND A REGIONAL PROHIBITING ONE IF THE LATTER IMPOSES A MORE STRICT REGIME OF NON-PROLIFERATION. THE NPT REAFFIRMS IN ITS ARTICLE VII THE RIGHT OF ANY GROUP OF STATES TO CONCLUDE REGIONAL TREATIES IN ORDER TO ASSURE THE TOTAL ABSENCE OF NUCLEAR WEAPONS IN THEIR RESPECTIVE TERRITORIES.

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17. ON THE OTHER HAND, IT WAS POINTED OUT THAT PARTICIPATION IN A REGIONAL ARRANGEMENT DOES NOT IMPLY RECOGNITION OR OBLIGATION TO ACCEDE TO UNIVERSAL TREATIES - FOR EXAMPLE, THE NPT. IT WAS NEVERTHELESS SUGGESTED BY MANY EXPERTS THAT STATES CREATING NUCLEAR-WEAPON-FREE ZONES SHOULD BE PARTIES TO THE NPT.

18. IF STATES HAVING DE JURE OR DE FACTO RESPONSIBILITIES FOR ADMINISTERED TERRITORIES IN THE GEOGRAPHICAL ZONE ESTABLISHED BY A NUCLEAR-WEAPON-FREE ZONE TREATY AND ACCEPT THE ZONAL TREATY, THIS DOES NOT MEAN THAT THEY ACCEPT THE PRINCIPLE OF NON-PROLIFERATION OF NUCLEAR WEAPONS ON THE REST OF THEIR TERRITORY, BUT STRICTLY ON ITS TERRITORY WITHIN THE ZONE. THIS IS THE CASE, FOR INSTANCE,

OF ADDITIONAL PROTOCOL I TO THE TREATY OF TLATELOLCO.

RELATIONSHIP WITH THE UNITED NATIONS

19. THE UNITED NATIONS, THE MAIN PURPOSE OF WHICH IS TO MAINTAIN INTERNATIONAL PEACE AND SECURITY, CONSTITUTES A CENTRE FOR HARMONIZING THE ACTIONS OF NATIONS IN THE ATTAINMENT OF THEIR COMMON ENDS. IT IS THUS ONLY NATURAL THAT THE UNITED NATIONS HAS AND UNCLASSIFIED

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CAN PLAY A POSITIVE ROLE IN THE ESTABLISHMENT OF NUCLEAR-WEAPON-FREE ZONES.

20. THE TREATY ESTABLISHING A NUCLEAR-WEAPON-FREE ZONE, AS ANY OTHER INTERNATIONAL LEGAL INSTRUMENT, SHOULD NOT CONFLICT WITH THE GENERAL OBLIGATIONS UNDERTAKEN BY STATES UNDER THE UNITED NATIONS CHARTER, AND IN CASE OF COLLISION BETWEEN THE PROVISIONS OF THE CHARTER AND OTHER INSTRUMENTS, THE OBLIGATIONS UNDER THE CHARTER SHALL PREVAIL AS STIPULATED IN ARTICLE 103 OF THE CHARTER.

21. THE POSITIVE ROLE THAT UN MACHINERY CAN PLAY IN VARIOUS STAGES OF THE ESTABLISHMENT AND FUNCTIONING OF NUCLEAR-WEAPON-FREE ZONES HAS BEEN FREQUENTLY EMPHASIZED. IT WAS INDICATED THAT THE UNITED NATIONS COULD USE ITS AUTHORITY IN SUPPORTING THE CONCEPT, COULD PROVIDE ASSISTANCE AND, IF NECESSARY, THE MACHINERY TO ENABLE THE STATES CONCERNED TO MAKE PROGRESS IN THEIR DIRECT CONSULTATIONS, OR COULD EXERT INFLUENCE REGARDING THE UNDERTAKING BY NUCLEAR WEAPON STATES OF OBLIGATIONS VIS-A-VIS SUCH ZONES. IT HAS BEEN PROPOSED THAT ONE POSSIBLE ROLE FOR THE UNITED NATIONS NOT SUFFICIENTLY EXPLORED SO FAR COULD BE THE FIELD OF SAFEGUARDS AND CONTROL, TAKING FULL ADVANTAGE OF THE UNITED NATIONS FAMILY OF ORGANIZATIONS. IN SOME CASES LEGAL ADVICE ON DRAFTING THE TREATY COULD BE CONSIDERED.

22. IN VIEW OF THE UN FUNCTION IN RESPECT TO SETTLEMENTS OF INTERNATIONAL DISPUTES, A NUCLEAR-WEAPON-FREE ZONE COULD BENEFIT FROM THE EXISTING UN MACHINERY, INCLUDING THE INSTITUTIONS MENTIONED IN CHAPTERS VI AND VII OF THE CHARTER RELATED TO THE PACIFIC SETTLEMENT OF DISPUTES AND ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION. REFERENCE TO THIS POSSIBLE FUNCTION OF THE UN COULD BE FOUND IN OTHER CHAPTERS OF THE STUDY. REFERENCE HAS ALSO BEEN MADE TO SECURITY COUNCIL RESOLUTION 255 (1968), BUT IT IS SUGGESTED BY SOME EXPERTS THAT MORE SUBSTANTIAL MEASURES AND FORMULAE THAN THIS RESOLUTION WILL HAVE TO BE FOUND IN ORDER TO GIVE GREATER EFFECTIVENESS AND PRACTICABILITY TO THE GENERAL OBLIGATION ALREADY BORNE BY THE UNITED NATIONS IN THIS CONNEXION. THESE CONSIDER THAT A STRONGER LINK BETWEEN THE SYSTEM OF SAFEGUARDS AND CONTROL IN THE ZONE AND THE SYSTEM OF COLLECTIVE SECURITY UNDER THE UNITED NATIONS CHARTER SHOULD BE CREATED. ONE EXAMPLE COULD BE THAT OF

THE DETECTION OF A VIOLATION OF TREATY PROVISIONS WHICH COULD THEN
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BE REFERRED TO THE SECURITY COUNCIL AS A MATTER THREATENING INTER-
NATIONAL PEACE AND SECURITY.

23. IT IS FELT THAT IN VIEW OF THE OVERALL RESPONSIBILITIES OF
THE UNITED NATIONS IN THE FIELD OF ARMS CONTROL AND DISARMAMENT,
IT WOULD BE APPROPRIATE THAT THE PARTIES TO NUCLEAR-WEAPON-FREE
ZONES TREATIES SHOULD CONVEY TO THE UNITED NATIONS AS A MATTER OF
COURSE THROUGH THE SECRETARY-GENERAL, OR ANY OTHER WAY, PERIODIC
INFORMATION ABOUT THE IMPLEMENTATION OF THE PURPOSES AND PROVI-
SIONS OF THE TREATY.

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